IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 2223 OF 2007

DATE OF DECISION: March 13, 2007

Parties Name

MAIMRE Agroha

..PETITIONER

VERSUS

The Presiding Officer, Industrial Tribunal and another

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE NIRMAL YADAV

PRESENT: Mr. Raman B. Garg,
Advocate, for the petitioner.

JASBIR SINGH, J. (oral)

Order.

This writ petition has been filed against the award dated March 1, 2006, vide which respondent – workman was ordered to be re-instated in service with 50% back wages. It is proved that in 12 months, preceding the date of his termination, the workman had completed 240 days with the petitioner – Management. The Labour Court, on analysis of evidence, has observed thus:

> "8. The main ground pressed to assail the termination is that the provisions of Section 25F of the Act were not complied with. An employer under the said provisions is required to give one month's notice or one month's salary in lieu thereof along with retrenchment compensation at the time of terminating the services of a worker who had worked for at least 240 days

during twelve month's period preceding the date of termination.

9. WW2 Rajiv Mangla, on the basis of official record, has proved that the workman had worked for more than 240 days during twelve months' period preceding 31.3.1999, i.e., the date of termination. O.P. Bhatia MW1 while appearing on behalf of the management has conceded in cross-examination that the workman was not given retrenchment compensation and a junior worker Devi Lal continued to work even after termination of his services. The impugned termination was thus invalid due to non-compliance of Section 25F of the Act and also due to violation of the principle of 'last come first go' as enshrined in Section 25G of the Act.

10. The management has argued that compliance of Section 25F of the Act was not required because the impugned termination was effected due to paucity of funds, which was a reason beyond its control. The argument is not acceptable because Section 2(oo) of the Act is quite clear on the point that every termination for whatsoever reason amounts to 'retrenchment' except in four eventualities. These eventualities are (i) voluntary retirement of the workman, (ii) retirement of the workman on reaching the age of superannuation (iii) termination of service of workman on expiry of the specified period for which he was appointed as per terms and conditions agreed between the parties and (iv) termination of service of workman on the ground of continued ill-health. The

management has neither claimed nor proved that the impugned termination falls within any of these four categories. Termination of services due to paucity of funds is not covered by any of the above referred eventualities and will, therefore, amount to 'retrenchment'. So, compliance of the provisions of Section 25F of the Act was necessary."

It is apparent from the records that WW2 Rajiv Mangla has deposed on the basis of official record that the workman had completed 240 days during 12 months preceding the date of his termination, i.e., March 31, 1999. Management's witness O.P. Bhatia has categorically admitted that before terminating services of the respondent -workman, compliance of the provisions of Section 25-F of the Industrial Disputes Act was not made.

Counsel for the petitioner vehemently contended that no doubt workman has completed 240 days with the management, but on the post, where he was working before his termination, the workman had worked only for 54 days. To prove this contention, the petitioner has not brought on record any appointment letter before the Labour Court. Furthermore, it was a specific stand before the Court below that the services of the workman were terminated because of paucity of funds. We are of the view that granting 50% back wages, in view of facts of this case, is rather on the lower side. Dismissed.

(Jasbir Singh)
Judge

(Nirmal Yadav)
Judge

March 13, 2007.
DKC